

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

KENNETH FRED HANEY,  
NANCY SUE HANEY,

Debtor(s).

CHARLES E. WATSON,  
PATSY WATSON,

Plaintiff(s),

In Proceeding  
Under Chapter 13

Case No. BK 92-50275

Adversary No. 98-3094

KENNETH FRED HANEY,  
NANCY SUE HANEY, and  
JAMES W. MCROBERTS,  
Trustee,

Defendant(s).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Findings of Fact**

1. KENNETH FRED HANEY and NANCY SUE HANEY ("Debtors") operate a business called ALTON MEMORIAL SALES, INC., as sole shareholders, officers, and directors of the Illinois corporation. The primary business of the company is the sale and installation of grave markers.

2. On October 31, 1988, Debtors signed a Promissory Note in the principal amount of \$136,600.00, with interest as specified in the note (a floating rate tied to prime with a minimum of 8% and a maximum of 11% per annum), in favor of CHARLES E. WATSON, JR. (WATSON).

3. Debtors gave WATSON a security interest in certain inventory and equipment detailed in a Security Agreement.

4. On March 30, 1992, Debtors filed a Chapter 13 bankruptcy proceeding in this Court.

5. On June 15, 1992, WATSON and PATSY WATSON (WATSONS) filed a claim, alleging that they were fully secured, in the amount of \$146,000.00.

6. Debtors disputed the amount of the claim and value of the security. After negotiations, the parties entered into a Settlement Agreement wherein Debtors agreed to pay to the WATSONS through the Chapter 13 bankruptcy, the amount of \$138,000.00, through a combination of a secured claim in the amount

of \$66,000.00, with interest at 14.75% per annum, which was paid in full, and an unsecured claim in the amount of \$80,000.00. The WATSONS filed an amended claim on October 5, 1992.

7. Pursuant to paragraph 4 of said Settlement Agreement, if, for any reason, the WATSONS did not receive \$138,000.00 "whether by dismissal of the Plan or by any other event, without limitation," then the WATSONS would be free to file suit to collect the entire balance due Charles Watson under the promissory note, including interest, as if bankruptcy had not been filed, crediting Debtors with any amounts received through the Chapter 13 Plan.

8. The Settlement Agreement was not filed with the Court or with the Chapter 13 Trustee, and was not approved by the Court. The Settlement Agreement does not comply with all the requirements of 11 U.S.C. §524(c) for reaffirmations of debt.

9. Based on claims filed and anticipated at the time this agreement was reached, the WATSONS would have received in excess of \$138, 000. 00 under the Chapter 13 plan. However, an unscheduled claim in the amount of \$6,795.00, filed by the IRS and paid as a priority claim, reduced payments on unsecured claims, so that, in fact, the WATSONS received \$133,741.02 through the Chapter 13 bankruptcy plan.

10. The WATSONS received all payments due them from the Chapter 13 Trustee pursuant to the claims filed and the terms of the Debtors' Plan. They received full payment for the value of Charles Watson's security, the secured portion of their claim having been fully paid, with interest, totaling \$93,973.74. The WATSONS received an additional \$39,767.28 on the unsecured portion, for a total of \$133,741.02. This is \$4,258.98 less than the sum of \$138,000.00 specified in the Settlement Agreement.

11. A discharge was entered in Debtors' Chapter 13 case on March 21, 1997, and the case was subsequently closed, Debtors having successfully completed their Chapter 13 case in accordance with their Plan and claims filed.

12. The failure of the WATSONS to receive \$138,000.00 was not the result of any direct action on the part of the Debtors, who performed the terms of the Plan in good faith.

13. The WATSONS filed a Motion to Reopen on March 19, 1998, seeking to reopen Debtors' Chapter 13 case and vacate their discharge with respect to the WATSONS' claim.

14. The case was reopened on April 22, 1998. The WATSONS subsequently filed their Complaint to determine dischargeability of their debt on or about April 24, 1998. On or about May 22, 1998,

Debtors filed their answer; affirmative defenses consisting of (1) payment of all amounts due under the Agreement and (2) that the Settlement Agreement is unenforceable under 11 U.S.C. §524; and a counter claim for violation of the injunction of 11 U.S.C. §524(a)(2).

15. Debtors have tendered the amount of \$5,650.00 to the Chapter 13 Trustee, which is the amount needed to honor the terms of the Settlement Agreement and to pay the same pro rata share to the unsecured creditors as the WATSONS will receive.

16. If the Court were to vacate the discharge of the Debtors as to the WATSONS' debt, the amount the WATSONS seek to collect is \$67,859.95.

#### Conclusions of Law

1. This Court has jurisdiction under 28 U.S.C. §1334.
2. This is a core proceeding under 28 U.S.C. §157(b) and is a proceeding to determine the dischargeability of a debt.
3. Venue is proper under 28 U.S.C. §1409.
4. Inasmuch as the Settlement Agreement was not filed with the Court and was not approved by the Court, it is not enforceable. In addition, the Agreement is not enforceable as a reaffirmation agreement since it fails to comply with all requirements of 11 U.S.C. §524(c).
5. Enforcement of the strict terms of the Agreement by finding the debt nondischargeable, as urged by the WATSONS, would result in a highly inequitable result.
6. The debt owed by Debtors to the WATSONS was discharged by the Order entered in their bankruptcy case on March 21, 1997, and was not reaffirmed. However, inasmuch as the Debtors stand willing to honor the terms of the Settlement Agreement by paying the WATSONS \$138,000.00 through their plan, and have tendered a check for \$5,650.00 to the Chapter 13 Trustee, the Court finds that in fairness to all, the Trustee shall administer said amount pursuant to the terms of the Debtors' Plan. Of the \$5,650.00 held by the Trustee, the WATSONS will receive at least \$4,258.98.

For the reasons stated, the Court will dismiss the WATSONS' Complaint with prejudice and order the Chapter 13 Trustee to disburse to the unsecured creditors (including the WATSONS, who will receive at least \$4,258.98) the sum of \$5,650.00 which he holds.

SEE WRITTEN ORDER.

ENTERED: August 11, 1998

/s/ KENNETH J. MEYERS  
UNITED STATES BANKRUPTCY JUDGE